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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT ANTHONY GARCIA,

Defendant and Appellant.

B290095

(Los Angeles County
Super. Ct. No. BA401386)

APPEAL from a judgment of the Superior Court of Los Angeles County, William H. Sterling, Judge. Affirmed.

Melissa J. Kim, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

INTRODUCTION

Robert Anthony Garcia appeals from a judgment of conviction after the trial court denied his motion to withdraw his no contest plea. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Garcia Pleads No Contest and Admits Allegations

The People charged Garcia in consolidated cases with 10 felony counts and alleged multiple enhancements. Attorney John Roberts represented Garcia in one case, and attorney Paul Cohen represented Garcia in the other case. After consolidation, both attorneys continued to represent Garcia.

On October 21, 2014 Garcia pleaded no contest to carjacking (Pen. Code, § 215) and second degree robbery (Pen. Code, § 211). He also admitted that he personally used a firearm in the commission of a felony within the meaning of Penal Code section 12022.53, subdivision (b), and that he had a prior conviction for a felony that was a serious felony within the meaning of Penal Code section 667, subdivision (a)(1), and a serious or violent felony within the meaning of the three strikes law (Pen. Code, §§ 667, subds. (b)-(j), 1170.12). The plea agreement provided that the court would sentence Garcia to a prison term of 27 years and that the court would dismiss the remaining counts and allegations.

At the plea hearing, Garcia was advised of and waived his constitutional rights, and he acknowledged he understood the consequences of his plea and admissions. Garcia was advised his maximum prison sentence on the consolidated cases was 63

years. The prosecutor asked Garcia, “Have you had a chance to talk to your attorney about the charge in this case including any defenses you may have?” Garcia answered, “Yes.” The prosecutor asked Garcia, “After speaking to your lawyer, is it your desire to accept the People’s offer?” Garcia answered, “Yes.” The prosecutor asked Garcia, “[D]o you understand the consequences of your plea?” Garcia answered, “Yes.” The prosecutor asked Garcia, “Are you pleading freely and voluntarily?” Garcia replied, “Yes.” Finally, the prosecutor asked Garcia, “Has anybody made any threats or promises to you or anyone close to you in order to get you to plead here today?” Garcia answered, “No.” The court found Garcia had knowingly, voluntarily, and intelligently waived his constitutional rights and the court entered Garcia’s plea.

B. The Trial Court Denies Garcia’s Request To Withdraw His Plea

On August 19, 2015, prior to the sentencing hearing, Garcia, represented by a new attorney, moved to withdraw his plea. Garcia’s primary claim was that Roberts led him to believe that, if Garcia rejected the prosecutor’s offer of 27 years in prison and the jury convicted him of the charges against him, the court would necessarily sentence Garcia to 63 years in prison.

At the hearing on the motion, Garcia testified that he first learned of the 27-year offer on the day of the plea hearing and that Roberts pressured him to accept it. Garcia testified Roberts told him the prosecutor would not allow Garcia to have any time to consider the offer and the People were prepared to go to trial within a week. Garcia testified he was “shocked” and “scared” and believed he had no choice but to accept the offer.

Garcia further testified he answered the prosecutor's questions at the plea hearing based solely on head movements and "cues" from Roberts. Garcia acknowledged he understood the plea proceedings at the time.

The trial court denied Garcia's motion to withdraw his plea. The court found that Garcia's testimony was not credible and that Garcia had not established good cause to withdraw his plea. The court continued the case for sentencing.

*C. The Court Conducts an Evidentiary Hearing To
Reconsider the Denial of Garcia's Request To Withdraw
His Plea*

On March 14, 2016 Garcia filed a motion for reconsideration of the trial court's order denying his request to withdraw his plea. The court granted the motion for reconsideration and scheduled an evidentiary hearing.

At the hearing, Cohen testified he was with Roberts and Garcia at the October 21, 2014 hearing. Cohen testified Roberts "continuously yell[ed]" at Garcia to accept the prosecution's offer of a 27-year prison sentence after the prosecutor had rejected a counteroffer from Garcia. Cohen also testified Roberts told Garcia that a jury would probably convict him and that, if convicted, Garcia would probably receive a prison sentence of more than 27 years. Cohen said Garcia wanted to go to trial but was "browbeaten" by Roberts into accepting the deal. At this point, the trial court expressed its concern Garcia's plea may not have been voluntary. The court continued the hearing on the People's motion.

When the hearing resumed, Roberts testified that at the October 21, 2014 hearing the prosecutor rejected Garcia's

counteroffer and said he would withdraw the 27-year offer if Garcia did not accept the offer that day. Roberts testified he spoke with Garcia several times about the prosecutor's offer. Roberts did not recall raising his voice, although he admitted he may have spoken forcefully or in an impassioned tone. Roberts did not think he yelled at Garcia. Roberts did not recall telling Garcia there was no time for him to consider the offer or talk to his family. Roberts said Garcia's decision to accept the 27-year deal was "100 percent [Garcia's] decision."

Laura Lopez, Garcia's mother, also testified. She stated she was dissatisfied with Roberts and wanted him to request a continuance of the October 21, 2014 hearing to allow her to retain new counsel for Garcia. Before Garcia accepted the prosecutor's offer, the trial court allowed him to speak privately with Lopez in the courtroom. Garcia expressed to Lopez his concern about proceeding to trial when he faced a maximum prison sentence of 63 years. Lopez testified Garcia decided to accept the 27-year offer because of the maximum sentence.

The trial court denied Garcia's motion to withdraw his plea. The court found that, on the day of the plea hearing, the parties were aware the court would not grant any further continuances, Garcia's two attorneys spent a considerable amount of time with Garcia before he entered his plea, Garcia had time to speak with Lopez about the case and to consider the plea offer, and Garcia faced a maximum prison term of 63 years. The court also found that the People's evidence against Garcia was strong, Robert's candid and emphatic advice to accept the offer was not improper under the circumstances, Cohen's testimony was not convincing, and nothing in the transcript of the plea hearing suggested Garcia's plea was involuntary. The court determined Garcia's

motion to withdraw his plea was motivated by “buyer’s remorse” rather than an inability to exercise free judgment.

D. The Trial Court Sentences Garcia, Who Appeals and Obtains a Certificate of Probable Cause

In accordance with the plea agreement, the trial court sentenced Garcia to a prison term of 27 years and dismissed the remaining counts and allegations. Garcia filed a timely notice of appeal, challenging the court’s denial of his motion to withdraw his plea. The trial court granted Garcia’s request for a certificate of probable cause.

DISCUSSION

We appointed counsel to represent Garcia in this appeal. After reviewing the record, counsel filed an opening brief raising no issues. On February 21, 2019 we gave Garcia notice he had 30 days to submit a brief or letter raising any grounds of appeal, contentions, or arguments he wanted us to consider. We have not received a response.

We have examined the record and are satisfied that appellate counsel for Garcia has complied with her responsibilities and that there are no arguable issues. (See *Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

At any time before judgment, the court may allow a defendant to withdraw his or her guilty or no contest plea for good cause. (Pen. Code, § 1018; *People v. Archer* (2014) 230 Cal.App.4th 693, 702.) To establish good cause, “the defendant

must show by clear and convincing evidence that he or she was operating under mistake, ignorance, or any other factor overcoming the exercise of his or her free judgment, including inadvertence, fraud, or duress.” (*People v. Archer*, at p. 702.) “The defendant may not withdraw a plea because the defendant has changed his or her mind.” (*Ibid.*)

““When a defendant is represented by counsel, the grant or denial of an application to withdraw a plea is purely within the discretion of the trial court after consideration of all factors necessary to bring about a just result. [Citations.] On appeal, the trial court’s decision will be upheld unless there is a clear showing of abuse of discretion. [Citations.]” . . . “Guilty pleas resulting from a bargain should not be set aside lightly and finality of proceedings should be encouraged.”” (*People v. Nocelotl* (2012) 211 Cal.App.4th 1091, 1096; accord, *People v. Alexander* (2015) 233 Cal.App.4th 313, 318.)

The trial court did not abuse its discretion in concluding Garcia made a rational and voluntary choice when he accepted the plea agreement and in denying the motion to withdraw the plea. Garcia never contended that the People did not have a factual basis for the charges against him or that a sentence of 27 years was disproportionate to his culpability. Nor did Garcia dispute that he faced a maximum sentence of 63 years if found guilty following a trial. Although Garcia asserted Roberts pressured him into pleading no contest and accepting the People’s offer, the court disbelieved Garcia and doubted the accuracy of Cohen’s recollections. And Roberts testified he explained to Garcia the realistic consequences of going to trial.

DISPOSITION

The judgment is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

FEUER, J.